

**Office of Chief Counsel
Internal Revenue Service
memorandum**

INCOME TAX AND ACCOUNTING

CC:DOM:IT&A:1
JJMcGreevy FREV-248156-96

date: SEP 16 1996

to: National Director Customer Service Operations T:C:O

from: Senior Technician Reviewer, Branch 1, CC:DOM:ITA

subject: Salary Offset Waiver Request

This is in reply to your request for our consideration of the Social Security Administration (SSA) request for a waiver of the requirement that it conduct salary offsets as a precondition to referring a debt for tax refund offset (TRO).

In 1995, SSA asked for and received a waiver of the requirement of credit bureau reporting and administrative offset as a precondition to referring a debt for TRO. The waiver was recommended on the grounds that 31 U.S.C. 3701(d), as amended by section 5 of the Social Security Domestic Employment Reform Act of 1994 (DERA), provides that sections 3711(f) and 3716-3719 of title 31 do not apply to a claim or debt under, or to an amount payable under the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under section 204(f) of such Act (42 U.S.C. 404(f)).

Section 204(f)(1) of the Social Security Act, as amended by DERA, provides that with respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, and 3718 of title 31 in effect on October 1, 1994. Section 204(f)(2)(C) defines "delinquent amount" as an amount determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

Section 204(a)(1)(A) of the Social Security Act describes the procedure for adjustment of overpayments and underpayments. The procedure includes recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31.

An opinion from SSA's General Counsel furnished in connection with the 1995 waiver request noted two possible interpretations of section 204(f)(2)(C). The opinion states that section 204(f)(2)(C) could be interpreted to mean that SSA must attempt, and fail, to recover an overpayment under all the methods listed in section 204(a)(1)(A), including TRO, before SSA

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could determine that the debt is unrecoverable under section 204 and attempt the practices authorized by sections 3711(f), 3716 or 3718 of 31 U.S.C. The other interpretation is that the language of section 204(f)(2)(C) only refers to benefit adjustment and demand for payment and not TRO. Under this interpretation, credit bureau reporting and administrative offset would be possible prior to TRO. The first interpretation would result in a legal impediment. We concluded that the first interpretation was reasonable and that the waiver was appropriate.

Section 31001(z)(1)(D) of the Debt Collection Improvement Act of 1996 (DCIA) amended 31 U.S.C. 3701(d) to state, in part, that sections 3711(f) and 3716-3719 of title 31 do not apply to a claim or debt under, or to an amount payable under the Social Security Act (42 U.S.C. 301 et seq.), except to the extent provided under section 204(f) of such Act and section 3716(c) of title 31.

Section 31001(z)(2) of DCIA amended section 204(f) of the Social Security Act (42 U.S.C. 404(f)) to read as follows:

(f)(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31, United States Code and in section 5514 of title 5, United States Code, as in effect immediately after the enactment of the Debt Collection Improvement Act of 1996.

~~DCIA amended section 204(f)(1) to authorize SSA to make~~ salary offsets pursuant to section 5514 of title 5. However, because DCIA did not amend section 204(f)(2)(C) it appears that the same legal impediment applies to utilizing salary offset prior to TRO as applies to utilizing credit bureau reporting and administrative offset prior to TRO. That is, salary offset is available only if the amount owed is otherwise unrecoverable under section 204 (including TRO) after the person ceases to be a beneficiary. Therefore, we agree with the statement in SSA's August 27, 1996, letter that the authority to use salary offset is subject to the same restrictions that apply to SSA's use of administrative offset and credit bureau reporting and that these restrictions constitute a legal impediment to using salary offset prior to TRO.

If you have any questions regarding this memorandum contact John McGreevy at 622-7506.